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C.M.A. No. 1345 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2023

PRONOUNCED ON: 17.04.2024

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1345 of 2021

Selvanayagi

... Appellant / Respondent

Vs.

1. M.M. Vijayakumar

2. Murugaiyan

3. The Divisional Manager,
Divisional Office,
United India Insurance Company Limited,
1170, Mettur Road,
Erode – 638 011.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation in the Judgment and Decree dated 20.11.2018 made in M.C.O.P. No. 131 of 2017 on the file of the Motor Accident Claims Tribunal / IV-Additional District Court of Erode District at Bhavani.

For Appellant	:	Mr. Ma.P. Thangavel
For RR 1 and 2	:	Notice Dispensed With
For R3	:	Mr. A. Dhiraviyanathan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation in the award dated 20.11.2018 made in M.C.O.P. No. 131 of 2017 on the file of the Motor Accident Claims Tribunal / IV-Additional District Court of Erode District at Bhavani.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 11.11.2016, at about 09:00 PM, the claimant was walking on the Anthiyur to Barugur main road, while she reached near Government Girls Higher Secondary School from North to South, at that time, a car bearing Registration No.TN-05-P-0456 driven by the first respondent in a rash and negligent manner came in the opposite direction and hit against the claimant, thereby causing severe injuries to her. Immediately after the accident, the claimant was taken to the Government Hospital, Anthiyur subsequently, undergone treatment at KMCH, Coimbatore. A criminal case was registered in Cr.No.604/2016 under Section 276, 337 of IPC on the file



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Anthiyur Police Station. For the injuries sustained, the claimant has come forward with claim petition seeking compensation for a sum of Rs.50,00,000/- by invoking section 166 of the Motor Vehicles Act, 1988.

4. The first and second respondents are the driver and owner of the car respectively and the third respondent is the insurer of the car. The second respondent has filed counter and disputed the manner in which the accident has taken place and contended that the accident was taken place only due to the negligence on the part of the claimant, who negligently crossed the road. The second respondent also stated that the first respondent has valid driving licence and the insurance of the car was in force at the time of accident with the third respondent. The third respondent – insurance company filed counter and disputed the manner in which the accident has taken place and also disputed the age, occupation, income and disability sustained by the claimant and further contended that the compensation claimed is also on the higher side.

5. The Tribunal after considering the evidence placed on record, accepted the case of the claimant and directed the third respondent –



insurance company to pay the compensation to the claimant. The Tribunal also quantified and awarded compensation for a sum of Rs.28,85,775/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation. The third respondent – insurance company has not preferred any appeal.

7. The learned counsel appearing for the claimant submitted that the Tribunal after accepting the disability sustained by the claimant and awarded compensation under the head loss of earning capacity, however the Tribunal has not awarded future prospectus while assessing the loss of earning capacity and the compensation awarded under other heads is also on the lower side, hence prays to enhance the compensation.

8. The learned counsel appearing for the insurance company submitted that the Tribunal based on the evidence placed on record has rightly awarded the compensation, hence prays to confirm the award of the



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9. I have considered the submissions made on both sides and perused the materials available on record.

10. Ex.C.1 – Disability certificate issued by the Erode Medical College Hospital shows that the claimant was subjected to Medical Board Examination, wherein it is recorded that the claimant has sustained 30% permanent disability and also an additional permanent disability of 25%. On perusal of Exs.P.8,10 and 12 – Discharge summaries shows that the claimant was admitted in the hospital on 12.11.2016 and discharged on 01.02.2017 and during this period of treatment in the hospital, the following final diagnosis and procedures were done to the claimant.

FINAL DIAGNOSIS:

1. RTA with diffuse Axonal injury
2. Right Tibia fracture
3. Right Ulna fracture
4. Left humerus fracture
5. Left Pneumothorax

PROCEDURE:

1. Articular reconstruction right medial column distal humerus + Articular reconstruction right lateral column humerus with ORIF of



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right ulnar right radial head excision done on 14.11.2016.

2. Left ICD done on 18.11.2016.
3. ORIF Left humerus right special reconstruction nailing right tibia on 21.11.2016.
4. ICD removed on 22.11.2016.
5. Decannulation on 23.01.2017.
6. POP below knee on 25.01.2017.

11. Ex.P.14 – Discharge Summary shows that she was again admitted in the hospital on 31.10.2017 and discharged on 07.11.2017, wherein she has undergone major procedures and final diagnosis as follows:

MAJOR PROCEDURE:

1. Right Elbow Arthrolysis of humerus ulnar and radio ulnar synostosis done on 01.11.2017
2. Right 5th digit MCP joint Capsulotomy + Tenolysis of extensor digitorum to little finger done on 01.11.2017.

FINAL DIAGNOSIS:

Post Traumatic right side proximal radio ulnar and Humerus ulnar synostosis.

12. Ex.P.16 – Discharge summary shows that the claimant was once again admitted on 07.12.2017 and discharged on 08.12.2017, wherein it is recorded as follows:

MAJOR PROCEDURE:

ORIF Right Proximal Ulna with ao Plating



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WEB COPY FINAL DIAGNOSIS:

Right forearm monteggia fracture.

13. The Tribunal after appreciating the above evidences and the evidence of P.W.2 – Doctor, who has given treatment to the claimant, has held that the claimant has sustained 100% loss of earning capacity, but this was not challenged by the third respondent – insurance company herein. Before the Tribunal, the claimant claimed that she was earning Rs.20,000/- per month by working in her husband's tyre company and her husband was also examined as P.W.3 however, no document proof was adduced on the side of the claimant, therefore the Tribunal considering the age of the claimant has fixed the monthly notional income as Rs.6,500/-. The Tribunal by following the dictum laid down in *Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*, adopted the multiplier as '16' and awarded compensation of Rs.12,48,000/- under the head loss of earning power.

14. This Court is of the view that the notional monthly income



fixed by the Tribunal is on the lower side, the Division Bench of this Court

in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54***

(DB)] has laid down guidelines for fixing the notional income of various

categories of persons whose income has not been proved and based on cost

of index filed by CBDT, the notional income was permitted to be fixed,

based on Apex Court judgement of ***Syed Sadiq Vs. United India Insurance***

Company [2014 (1) TNMAC 459], held in paragraph nos.11, 12, 13 and 14

as follows:

"11. However, the Tribunal had accepted the views, principles and the method of income arrived by the Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459 case. In the said case the Hon'ble Apex Court fixed the monthly notional income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. The Tribunal also took the same figure of Rs.6,500/- for the deceased who met with accident and died during the year 2014. However, the Tribunal failed to consider that the accident occurred during the year 2014 and other factors as mentioned below before fixing the monthly salary of the deceased.

(i) The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts



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to generate additional income necessary for sustaining their families.

(ii) The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

(iii) Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour.

"12. Therefore it is just and necessary to increase the notional income of Rs.6,500/- fixed by the Hon'ble Apex Court during the year 2008 corresponding to the cost of living, prices of the essentials and inflation. Hence to determine the notional income of the deceased



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who was working as a daily wager in "The Ark Chicken Mutton Corner" in the year 2014, we decided to apply the cost of inflation index as issued by the Central Board of Direct Tax (CBDT) for the purpose of determination of notional income of the deceased person.

13. The CBDT vide Notification No.370142 (E) (No.26/2008) (F.No.370/42/3/2008-TPL) dated 13.06.2008 specifies the cost of inflation index as mentioned in column No.3, for the financial year mentioned in the corresponding entry in column No.2 in the below said tabular column:-

S.No.	Financial Year	Cost of Inflation Index
1	2001-2002	100
2	2002-2003	105
3	2003-2004	109
4	2004-2005	113
5	2005-2006	117
6	2006-2007	122
7	2007-2008	129
8	2008-2009	137
9	2009-2010	148
10	2010-2011	167
11	2011-2012	184
12	2012-2013	200
13	2013-2014	220
14	2014-2015	240
15	2015-2016	254
16	2016-2017	264
17	2017-2018	272
18	2018-2019	280



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14. *As per the above said index, the cost of inflation index for the year as 2007-2008 is 129 and for the year 2013-2014 will be 220. Now we determine the notional income of the deceased in the manner stated below:-*

<i>The notional income fixed by the Hon'ble Supreme Court of India (i.e., Rs.6,500/-)</i>	<i>Cost of Inflation Index for the vegetable vendor for the year 2013-2014</i>
129	

i.e., (Rs.6,500/- X 220)/ 129 = Rs.11,085/-(notional income of the deceased)"

15. Based on the above observations, this Court is inclined to modify the notional income fixed by the Tribunal based on the dictum laid down in the Division Bench judgment cited supra and the same is assessed as Rs.13,000/-. Accordingly, the compensation under loss of earning power is modified as **Rs.24,96,000/-** (Rs.13,000/- X 12 X 16).

16. On perusal of the award, it shows that the Tribunal has not awarded compensation by considering the future prospectus, hence this Court considering the age of the claimant and by following the dictum laid down in *Erudhaya Priya vs. State Express Transport Corporation Ltd.*,



[2020 SSCR 299 : 2020 ACJ 2159] and *Jagdish vs. Mohan and others*

[(2018) 4 SCC 571], inclined to award 40% future prospectus to the claimant on the compensation awarded under loss of earning capacity, accordingly, the compensation towards future prospectus is assessed as **Rs.9,98,400/-** (40% of Rs.24,96,000/-).

17. The Tribunal has awarded compensation for a sum of Rs.1,00,000/- under the head loss of income during the treatment period, since, the Tribunal has awarded compensation under the head loss of earning power, the compensation awarded under the head loss of income during the treatment period is not permissible and the same is hereby cancelled. Whereas the compensation awarded by the Tribunal under other heads are concerned, this Court finds no infirmity, hence the same are hereby confirmed.

18. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of earning capacity	12,48,000/-	24,96,000/-	Enhanced
2.	Loss of income during the treatment period	1,00,000/-	---	Cancelled
3.	Medical expenses	13,63,168/-	13,63,168/-	Confirmed
4.	Compensation towards 'Knee Removal'	47,400/-	47,400/-	Confirmed
5.	Extra Nourishment	25,000/-	25,000/-	Confirmed
6.	Pain and Suffering	50,000/-	50,000/-	Confirmed
7.	Transportation expenses	27,207/-	27,207/-	Confirmed
8.	Attender charges	25,000/-	25,000/-	Confirmed
9.	Future prospectus	---	9,98,400/-	Granted
	Total Compensation	28,85,775/-	50,32,175/-	Enhanced

19. In this case, the claimants have made a claim of Rs.50,00,000/- as compensation and granting compensation amount exceeding the claim amount is permissible since it is mandate on the part of the Tribunal to award 'Just Compensation'. The word 'Just Compensation' is interpreted by the Apex Court in *Nagappa vs. Gurudayal Singh and others [2023 (2) SCC 274]* as follows:

“12. This Court in Sheikhpura Transport Co. Ltd. v. Northern Indian Transport Insurance Co. MANU/SC/0539/1971 : AIR1971SC1624 observed as under:-



".....the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must be necessarily be an estimate or even partly a conjecture...."

The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error....."

13. Hence, as stated earlier, it is for the Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted this claim. From 63 of the Karnataka Motor Vehicles Rates, 1989, which is for filing an application for compensation, does not provide that claimant should specify his claim amount. It inter alia provides that he should mention his monthly income as well as the nature of injury sustained and medical certificates.

14. In case, where there is evidence on record justifying the enhanced compensation for the medical treatment which is required because of the injury caused to a claimant due to the accident, there is no reason why such amendment or enhanced compensation should not be granted. In such cases, there is no question of introducing a new or inconsistent cause of action. Cause of action and evidence remain the same. Only Question is - application of law as it stands.

15. Mr. P.K. Chakravarty, learned counsel appearing for the Insurance Company, in support of his contention that the Tribunal has no jurisdiction to award higher amount of compensation than what is claimed even



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though it is not likely to cause prejudice to the Insurance Company, heavily relied upon the decision rendered by the Full Bench of the High Court of Gujarat in Dr. Urmila J. Sangani v. Pragjibhai Mohanlal Luvana and Ors. MANU/GJ/0167/2000 : AIR2000Guj211 . In that case, the High Court after considering relevant decisions on the subject observed thus:--

"....We may mention that when the claimant feels that he is entitled to more compensation than what is claimed in the petition, it is always open to him/her to amend the claim petition and if the same is in consonance with the equity, justice and good conscience, there is no reason why the Claims Tribunal should not grant amendment. Before compensation more than claimed is awarded, the opposite parties should be put to notice, the requisite additional issue/issue should be raised and the parties should be permitted to adduce their evidence on the additional issues, but if no such opportunity is given, the procedure would obviously suffer from material irregularity affecting the decision."

16. From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the Court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence."

20. The Hon'ble Apex Court in *Sidram vs. The Divisional Manager, United India Insurance* [Manu/SC/1493/2022 : 2023 (3) SCC



439], has interpreted the term 'Just Compensation' as follows:

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“32. This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives.”

21. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.28,85,775/- is hereby enhanced to **Rs.50,32,175/- [Rupees Fifty Lakhs Thirty Two Thousand One Hundred and Seventy Five only]** along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The third respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P. No.131 of 2017 on the file of the Motor Accidents Claims Tribunal / IV-Additional District Court Erode District at



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Bhavani. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. In other aspects, the award of the Tribunal shall stand confirmed. Since this Court has enhanced the compensation, the appellant /claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

17.04.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Motor Accident Claims Tribunal,
IV Additional District Court at Erode
District at Bhavani.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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